

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of KAREN S. WILLIAMS and U.S. POSTAL SERVICE,
GENERAL MAIL FACILITY, Washington, D.C.

*Docket No. 97-2077; Submitted on the Record;
Issued July 1, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
DAVID S. GERSON

The issues are: (1) whether appellant met her burden of proof in establishing that she sustained a recurrence of disability after October 3, 1996 that was causally related to her accepted March 1, 1993 employment injury of acute stress reaction; and (2) whether the Office of Workers' Compensation Programs properly terminated appellant's medical benefits effective November 26, 1996; and (3) whether the Office's denial of a merit review in relation to appellant's request for reconsideration under section 8128 of the Federal Employees' Compensation Act constituted an abuse of discretion.

On June 14, 1993 appellant, then a 39-year-old multiple position letter sorter machine operator, filed an occupational disease claim, alleging that she sustained acute situational anxiety beginning March 1993 that was causally related to factors of her federal employment. Appellant stopped work on June 11, 1993. By decision dated December 8, 1993, the Office accepted appellant's claim for acute stress reaction with situational anxiety. In the statement of accepted facts accompanying the decision, the Office outlined the following incidents as causative factors of appellant's condition which occurred within the performance of duty: from March to June 1993, Nelson Ennis was involved in disputes with appellant in which he spoke to her in a loud voice and cursed her; he made lewd remarks of a sexual nature to appellant and exposed his buttocks to her on one occasion; on or around February 5, 1993, Mr. Ennis had a confrontation with appellant in which he spoke in a loud and demanding voice and grasped his trousers in the genital area while making crude remarks; on April 15, 1993 he again confronted appellant and cursed her and made lewd comments; and on June 11, 1993 Mr. Ennis cursed appellant, made obscene remarks and pulled at his genitals in a dispute with appellant. On August 8, 1994 appellant returned to work as a modified distribution clerk at another postal facility.¹ Appellant received appropriate compensation for temporary total disability before she returned to work and

¹ Although Mr. Ennis was to be terminated for his conduct with appellant, he was returned to work after being placed on administrative leave. The Office advised appellant that her compensation would be continued until she was placed in a facility secure from contact with Mr. Ennis.

received compensation for intermittent periods of disability November 14 to November 15, 1994 and February 7 to February 8, 1995.

On October 9, 1996 appellant filed a claim for recurrence of disability beginning October 3, 1996, alleging that she could not work a full shift due to her original diagnosed condition of acute stress reaction. In a decision dated November 11, 1996, the Office denied appellant's claim for recurrence of disability and terminated ongoing medical treatment on the grounds that appellant had not established that her claimed recurrence was causally related to her accepted employment injury. By merit decision dated January 7, 1997, the Office denied appellant's request for reconsideration on the grounds that the evidence submitted was not sufficient to establish that modification of its prior decision was warranted. In a decision dated March 11, 1997, the Office denied appellant's second request for reconsideration on the grounds that the evidence submitted was cumulative and was not sufficient to warrant a merit review.

The Board has duly reviewed the entire case record on appeal and finds that appellant did not establish that she sustained a recurrence of disability beginning October 3, 1996.²

When an employee, who is disabled from the job she held when injured on the account of employment-related residuals, returns to a light-duty position, or medical evidence of record establishes that she can perform the work of a light-duty position, the employee has the burden of establishing by the weight of the reliable, probative and substantial evidence a recurrence of total disability and show that she cannot perform such light duty. As part of the burden, the employee must show a change in the nature and extent of the injury-related condition or a change in the nature and extent of the light-duty job requirements.³

In the present case, appellant was performing a light-duty position with the restriction that she not work in the same facility and be in a secure place away from Mr. Ennis. In the medical evidence appellant presented to support her claim for recurrence of disability, her physician of record, Dr. David J. O'Connell, a Board-certified psychiatrist, and Betty Good, a psychotherapist, indicated that appellant continued to have residuals effects from her past experience with Mr. Ennis and had new problems on her light-duty job, including problems with authority figures, conflicts with coworkers, feelings of discrimination by management, dissatisfaction with her work and a belief that she was being followed by postal inspectors. While the identified problems might form the basis for appellant to file a new claim, they do not establish a recurrence of disability as the evidence does not establish that these problems are causally related to appellant's accepted employment injury. Dr. O'Connell also submitted medical reports dated September 26 and November 1, 1996 in which he related appellant's residual symptoms of depression, emotional lability, suspiciousness, ideas of reference and persecutory delusions to the original incidents involving Mr. Ennis. Although Dr. O'Connell relates appellant's residual conditions to perceived management discrimination, this is not an

² The Board's jurisdiction to consider and decide appeals from final decisions of the Office extends only to those final decisions issued within one year prior to the filing of the appeal. As appellant filed her appeal with the Board on June 9, 1997, the only decisions before the Board are the Office's January 7 and March 11, 1997 decisions; *see* 20 C.F.R. §§ 501.2(c), 501.3(d)(2).

³ *Jackie B. Wilson*, 39 ECAB 915 (1988); *Terry R. Hedman*, 38 ECAB 22 (1986).

accepted factor of appellant's original emotional condition claim. In addition, he related incidents that occurred subsequent to appellant's placement in a light-duty position which are not germane to her claim of a recurrence as the cited incidents do not demonstrate a change in the nature and extent of appellant's position. Since Dr. O'Connell has not adequately explained why the diagnosed residual conditions are causally related to appellant's accepted injury, his reports are not sufficient to establish a change in the nature and extent of appellant's condition. Similarly, a May 22, 1996 report by Dr. Manuel Roman, a psychiatrist, is also insufficient to discharge appellant's burden of proof as the physician has not specifically addressed how the diagnosed condition of adjustment disorder with mixed anxiety is causally related to the accepted employment injury. Appellant did not meet her burden of proof to establish that she sustained a recurrence of disability after October 3, 1996 that was causally related to her accepted employment injury.

However, the Board also finds that the Office improperly terminated appellant's medical benefits effective November 26, 1996.

Under the Act,⁴ once the Office accepts a claim and pays compensation, it has the burden of justifying modification or termination of compensation.⁵ After the Office determines that an employee has a disability causally related to his or her employment, the Office may not terminate compensation without establishing that its original determination was erroneous or that the disability has ceased or is no longer related to the employment injury.⁶

The fact that the Office accepts appellant's claim for a specified period of disability does not shift the burden of proof to appellant to show that he or she is still disabled. The burden is on the Office to demonstrate an absence of employment-related disability in the period subsequent to the date when compensation is terminated or modified.⁷ Therefore, the Office must establish that appellant's condition was no longer aggravated by employment factors after November 26, 1996 and the Office's burden includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁸

When she filed her claim for recurrence, appellant continued to undergo medical treatment which her physicians believed was related to her March 1993 accepted injury. In its decision affirming the denial of appellant's claim for recurrence of disability, the Office concluded that it was appellant's burden to demonstrate that medical treatment was necessary and that her failure to establish a recurrence of disability allowed termination of her medical benefits as well. However, appellant was receiving continued medical treatment in relation to her accepted claim and said benefits cannot be terminated unless the Office establishes that appellant's condition is no longer aggravated by the accepted employment factors. The record is

⁴ 5 U.S.C. §§ 8101-8193 (1974).

⁵ *William Kandel*, 43 ECAB 1011 (1992).

⁶ *Carl D. Johnson*, 46 ECAB 804 (1995).

⁷ *Dawn Sweazey*, 44 ECAB 824 (1993).

⁸ *Mary Lou Barragy*, 46 ECAB 781 (1995).

devoid of any evidence relevant to this issue. Consequently, the Office improperly terminated appellant's medical benefits effective November 26, 1996.

The Board further finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain a review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these requirements, the Office will deny the application for review without reviewing the merits of the claim.⁹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹⁰ Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.¹¹

With her request for reconsideration appellant submitted a report dated January 21, 1997 by Dr. O'Connell in which he essentially reiterated the information provided in his September and November 1996 reports. As this report is cumulative of the prior medical evidence of record is not sufficient to establish that merit review of the record is warranted.

⁹ 20 C.F.R. § 10.138(b)(2).

¹⁰ *Sandra F. Powell*, 45 ECAB 877 (1994); *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

¹¹ *Dominic E. Coppo*, 44 ECAB 484 (1993); *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

The decision of the Office of Workers' Compensation Programs dated March 11, 1997 is hereby affirmed. The decision of the Office dated January 7, 1997 is affirmed with respect to the denial of the claim for recurrence of disability and reversed with respect to termination of appellant's medical benefits.

Dated, Washington, D.C.
July 1, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

David S. Gerson
Member